

STROOCK & STROOCK & LAVAN LLP
JULIA B. STRICKLAND (State Bar No. 083013)
BRIAN C. FRONTINO (State Bar No. 222032)
ERIC Y. HWANG (State Bar No. 258966)
2029 Century Park East
Los Angeles, CA 90067-3086
Telephone: 310-556-5800
Facsimile: 310-556-5959
E-Mail: lalacalendar@stroock.com

Attorneys for Defendant
CHEX SYSTEMS, INC.

LAW OFFICES OF PETER L. RECCHIA
PETER L. RECCHIA (State Bar No. 77857)
1605 E. 4th Street, Suite 250
Santa Ana, CA 92701
Telephone: 714-541-2858
Facsimile: 714-541-6880
E-Mail: attnyrecchia@aol.com

CALLAHAN, MCCUNE & WILLIS, APLC
LEE A. SHERMAN (State Bar No. 172198)
111 Fashion Lane
Tustin, California 92780-3397
Tel: (714) 730-5700
Fax: (714) 730-1642
Email: lee_sherman@cmwlaw.net

Attorneys for Plaintiff
ELIZABETH LAVALLE

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ELIZABETH LAVALLE, individually
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

CHEXSYSTEMS and DOES 1 to 10,
inclusive,

Defendants.

Case No. SA CV08-1383 AHS (RNBx)
[Assigned to the Honorable Alice-Marie
Stotler]

**STIPULATION FOR ENTRY OF
PROTECTIVE ORDER AND
~~PROPOSED~~ PROTECTIVE
ORDER**

Action Filed: December 4, 2008

1 The Court hereby enters this Protective Order based upon the stipulation of the
2 parties and good cause appearing, which, for the duration of the above-entitled
3 litigation and as provided herein, shall govern the exchange of confidential
4 information between plaintiff Elizabeth LaValle and defendant Chex Systems, Inc.
5 The parties to this Protective Order are collectively referred to herein as the “Parties”
6 and individually as a “Party.”

7 **I. PURPOSES AND LIMITATIONS**

8 Disclosure and discovery activity in this action are likely to involve production
9 of confidential, proprietary, or private information for which special protection from
10 public disclosure and from use for any purpose other than prosecuting this litigation
11 would be warranted. Accordingly, the parties hereby stipulate to and petition the
12 court to enter the following Stipulation for Entry of Protective Order and Protective
13 Order (“Stipulation and Order”). The parties acknowledge that this Order does not
14 confer blanket protections on all disclosures or responses to discovery and that the
15 protection it affords extends only to the limited information or items that are entitled
16 under the applicable legal principles to treatment as confidential. The parties further
17 acknowledge, as set forth in Section 10, below, that this Stipulation and Order
18 creates no entitlement to file confidential information under seal; Civil Local Rule
19 79-5 sets forth the procedures that must be followed and reflects the standards that
20 will be applied when a party seeks permission from the Court to file material under
21 seal.

22 **II. DEFINITIONS**

23 1. Party: any party to this action, including all of its officers, directors,
24 employees, consultants, retained experts, and outside counsel (and their support
25 staff).

26 2. Disclosure or Discovery Material: all items or information, regardless of
27 the medium or manner generated, stored, or maintained (including, among other
28

1 things, testimony, transcripts, or tangible things) that are produced or generated in
2 disclosures or responses to discovery in this matter.

3 3. “Confidential” Information or Items: information (regardless of how
4 generated, stored or maintained) or tangible things that qualify for protection under
5 standards developed under Federal Rule of Civil Procedure 26(c).

6 4. Receiving Party: a Party that receives Disclosure or Discovery Material
7 from a Producing Party.

8 5. Producing Party: a Party or non-party that produces Disclosure or
9 Discovery Material in this action.

10 6. Designating Party: a Party or non-party that designates information or
11 items that it produces in disclosures or in responses to discovery as “Confidential.”

12 7. Protected Material: any Disclosure or Discovery Material that is
13 designated as “Confidential.”

14 8. Outside Counsel: attorneys who are not employees of a Party but who
15 are retained to represent or advise a Party in this action.

16 9. House Counsel: attorneys who are employees of a Party.

17 10. Counsel (without qualifier): Outside Counsel and House Counsel (as
18 well as their support staffs).

19 11. Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve as
21 an expert witness or as a consultant in this action and who is not a past or a current
22 employee of a Party or of a competitor of a Party and who, at the time of retention, is
23 not anticipated to become an employee of a Party or a competitor of a Party. This
24 definition includes a professional jury or trial consultant retained in connection with
25 this litigation.

26 12. Professional Vendors: persons or entities that provide litigation support
27 services (e.g., photocopying; videotaping; translating; preparing exhibits or
28

1 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
2 their employees and subcontractors.

3 **III. SCOPE**

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also any information copied or extracted
6 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
7 testimony, conversations, or presentations by parties or counsel to or in court or in
8 other settings that might reveal Protected Material.

9 **IV. DURATION**

10 Even after the termination of this litigation, the confidentiality obligations
11 imposed by this Order shall remain in effect until a Designating Party agrees
12 otherwise in writing or a court order otherwise directs.

13 **V. DESIGNATING PROTECTED MATERIAL**

14 1. Exercise of Restraint and Care in Designating Material for Protection.

15 Each Party or non-party that designates information or items for protection under this
16 Order must take care to limit any such designation to specific material that qualifies
17 under the appropriate standards. A Designating Party must take care to designate for
18 protection only those parts of material, documents, items, or oral or written
19 communications that qualify – so that other portions of the material, documents,
20 items, or communications for which protection is not warranted are not swept
21 unjustifiably within the ambit of this Order.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations
23 that are shown to be clearly unjustified, or that have been made for an improper
24 purpose (e.g., to unnecessarily encumber or retard the case development process, or
25 to impose unnecessary expenses and burdens on other parties), expose the
26 Designating Party to sanctions.

1 If it comes to a Party's or a non-party's attention that information or items that
2 it designated for protection do not qualify for protection at all, that Party or non-party
3 must promptly notify all other parties that it is withdrawing the mistaken designation.

4 2. Manner and Timing of Designations. Except as otherwise provided in
5 this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
6 stipulated or ordered, material that qualifies for protection under this Order must be
7 clearly so designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (apart from transcripts of
10 depositions or other pretrial or trial proceedings), that the Producing Party affix the
11 legend "CONFIDENTIAL" on each page that contains protected material. If only a
12 portion or portions of the material on a page qualifies for protection, the Producing
13 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
14 markings in the margins).

15 A Party or non-party that makes original documents or materials available for
16 inspection need not designate them for protection until after the inspecting Party has
17 indicated which material it would like copied and produced. After the inspecting
18 Party has identified the documents it wants copied and produced, the Producing Party
19 must determine which documents, or portions thereof, qualify for protection under
20 this Order. Before producing the specified documents, the Producing Party must
21 affix the legend "CONFIDENTIAL" on each page that contains Protected Material.
22 If only a portion or portions of the material on a page qualifies for protection, the
23 Producing Party also must clearly identify the protected portion(s) (e.g., by making
24 appropriate markings in the margins).

25 (b) for testimony given in deposition, that the Party or non-party
26 offering or sponsoring the testimony identify on the record, before the close of the
27 deposition, all protected testimony. When it is impractical to identify separately each
28 portion of testimony that is entitled to protection, and when it appears that substantial

portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought. Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulation and Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL,” as instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions as “Confidential.”

(d) Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “Confidential” does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. If material is appropriately designated as “Confidential” after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1. Timing of Challenges. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality

1 designation by electing not to mount a challenge promptly after the original
2 designation is disclosed.

3 2. Meet and Confer. A Party that elects to initiate a challenge to a
4 Designating Party's confidentiality designation must do so in good faith and must
5 begin the process by conferring directly (in voice to voice dialogue; other forms of
6 communication are not sufficient) with counsel for the Designating Party. In
7 conferring, the challenging Party must explain the basis for its belief that the
8 confidentiality designation was not proper and must give the Designating Party an
9 opportunity to review the designated material, to reconsider the circumstances, and,
10 if no change in designation is offered, to explain the basis for the chosen designation.
11 A challenging Party may proceed to the next stage of the challenge process only if it
12 has engaged in this meet and confer process first.

13 3. Judicial Intervention. A Party that elects to press a challenge to a
14 confidentiality designation after considering the justification offered by the
15 Designating Party must comply with Local Rules 37-1 and 37-2 (including the Joint
16 Stipulation requirement) and file such Joint Stipulation with the Court (in compliance
17 with Civil Local Rule 79-5, if applicable) that identifies the challenged material and
18 sets forth in detail the basis for the challenge. The burden of persuasion in any such
19 challenge proceeding shall be on the Designating Party. Until the Court rules on the
20 challenge, all parties shall continue to afford the material in question the level of
21 protection to which it is entitled under the Producing Party's designation.

22 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

23 1. Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a non-party in connection with this case
25 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
26 Material may be disclosed only to the categories of persons and under the conditions
27 described in this Order. When the litigation has been terminated, a Receiving Party
28 must comply with the provisions of Section 11, below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a location
2 and in a secure manner ensuring that access is limited to the persons authorized
3 under this Order.

4 2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated CONFIDENTIAL
7 only to:

8 (a) the Receiving Party's Outside Counsel of record in this action, as
9 well as employees of said Counsel to whom it is reasonably necessary to disclose the
10 information for this litigation and who have signed the "Agreement to Be Bound by
11 Protective Order" that is attached hereto as Exhibit A;

12 (b) the officers, directors, and employees (including House Counsel)
13 of the Receiving Party to whom disclosure is reasonably necessary for this litigation;

14 (c) experts (as defined in this Order) of the Receiving Party to whom
15 disclosure is reasonably necessary for this litigation and who have signed the
16 "Agreement to Be Bound by Protective Order" (Exhibit A);

17 (d) the Court and its personnel;

18 (e) court reporters, their staffs, and professional vendors to whom
19 disclosure is reasonably necessary for this litigation;

20 (f) during their depositions, witnesses in the action to whom
21 disclosure is reasonably necessary and who have signed the "Agreement to Be
22 Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony
23 or exhibits to depositions that reveal Protected Material must be separately bound by
24 the court reporter and may not be disclosed to anyone except as permitted under this
25 Stipulated Protective Order.

26 (g) The author of the document or the original source of the
27 information.
28

**VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION.**

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulation and Order promptly to the party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Stipulation and Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

IX. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulation and Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request

1 such person or persons to execute the “Acknowledgment and Agreement to Be
2 Bound” that is attached hereto as Exhibit A.

3 **X. FILING PROTECTED MATERIAL**

4 A Party that seeks to file under seal any Protected Material must comply with
5 Civil Local Rule 79-5. If any papers to be filed with the Court contain information
6 and/or documents that have been designated as “Confidential,” the proposed filing
7 shall be accompanied by an application to file the papers or the portion thereof
8 containing the designated information or documents (if such portion is segregable)
9 under seal; and that the application shall be directed to the judge to whom the papers
10 are directed. For motions, the parties should publicly file a redacted version of the
11 motion and supporting papers.

12 **XI. FINAL DISPOSITION**

13 Unless otherwise ordered or agreed in writing by the Producing Party, within
14 sixty days after the final termination of this action, each Receiving Party must return
15 all Protected Material to the Producing Party. As used in this subdivision, “all
16 Protected Material” includes all copies, abstracts, compilations, summaries or any
17 other form of reproducing or capturing any of the Protected Material. With
18 permission in writing from the Designating Party, the Receiving Party may destroy
19 some or all of the Protected Material instead of returning it. Whether the Protected
20 Material is returned or destroyed, the Receiving Party must submit a written
21 certification to the Producing Party (and, if not the same person or entity, to the
22 Designating Party) by the sixty day deadline that identifies (by category, where
23 appropriate) all the Protected Material that was returned or destroyed and that affirms
24 that the Receiving Party has not retained any copies, abstracts, compilations,
25 summaries or other forms of reproducing or capturing any of the Protected Material.
26 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
27 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
28 work product, even if such materials contain Protected Material. Any such archival

1 copies that contain or constitute Protected Material remain subject to this Protective
2 Order as set forth in Section 4 (DURATION), above.

3 **XII. MISCELLANEOUS**

4 1. Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 2. Right to Assert Other Objections. By stipulating to the entry of this
7 Stipulation and Order no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 Stipulation and Order. Similarly, no Party waives any right to object on any ground
2 to use in evidence any of the material covered by this Protective Order.

3 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

4 Dated: August 10, 2009

LAW OFFICES OF PETER L. RECCHIA
PETER L. RECCHIA

6 By: /s/
7 Peter L. Recchia

8 Attorneys for Plaintiff
9 ELIZABETH LAVALLE

10 Dated: August 10, 2009

11 CALLAHAN, MCCUNE & WILLIS,
12 APLC
13 LEE A. SHERMAN

14 By: /s/
15 Lee A. Sherman

16 Attorneys for Plaintiff
17 ELIZABETH LAVALLE

18 Dated: August 10, 2009

19 STROOCK & STROOCK & LAVAN LLP
20 JULIA B. STRICKLAND
21 BRIAN C. FRONTINO
22 ERIC Y. HWANG

23 By: /s/
24 Brian C. Frontino

25 Attorneys for Defendant
26 CHEXSYSTEMS, INC.

27 **IT IS SO ORDERED.**

28 Dated: August 11, 2009



Honorable Robert N. Block
United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its
 entirety and understand the Stipulation for Entry of Protective Order and Protective
 Order (“Stipulation and Order”) entered by the United States District Court for the
 Central District of California in the case of Elizabeth Lavallo v. ChexSystems, Case
 No. SA CV08-1383 AHS (RNBx). I agree to comply with and to be bound by all the
 terms of this Stipulation and Order and I understand and acknowledge that failure to
 so comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that
 is subject to this Stipulation and Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulation and Order, even if such enforcement proceedings occur after termination
 of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action
 or any proceedings related to enforcement of this Stipulation and Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]